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## **An Act To Establish a Groundwater Withdrawal Program and To Recognize Groundwater as a Public Trust Resource**

**Be it enacted by the People of the State of Maine as follows:**

**Sec. 1. 38 MRSA §404-A** is enacted to read:

### **§ 404-A. Groundwater as a public resource; policy**

In recognition that the groundwater of the State is a precious, finite and invaluable resource upon which there is an ever-increasing demand for present, new and competing uses; and in further recognition that an adequate supply of groundwater for domestic, farming, dairy processing and industrial uses is essential to the health, safety and welfare of the people of the State:

**1. Regulation to benefit people of the State.** The withdrawal of groundwater of the State must be regulated in a manner that benefits the people of the State; is compatible with long-range water resource planning and proper management and use of the water resources of the State; and is consistent with the State's policy of managing groundwater as a public resource for the benefit of all residents;

**2. Maintenance of high-quality drinking water.** The State shall protect its groundwater resources to maintain high-quality drinking water;

**3. Minimization of risks.** The groundwater resources of the State must be managed to minimize the risks of groundwater quality deterioration by regulating human activities that present risks to the use of groundwater in the vicinities of those activities while balancing the State's groundwater policy with the need to maintain and promote a healthy and prosperous agricultural community; and

**4. Public trust.** The groundwater resources of the State are held in trust for the public. The State shall manage its groundwater resources for the benefit of the State's citizens who hold and share rights in those waters. The designation of the groundwater resources of the State as a public trust resource may not be construed to allow a new right of legal action by an individual other than the State, except to remedy injury to a particularized interest related to water quantity protected under this Title.

**Sec. 2. 38 MRSA §470-A, sub-§1,** as enacted by PL 2001, c. 619, §1, is amended to read:

**1. Nonconsumptive use.** "Nonconsumptive use" means any use of water that results in the water being discharged back into the same water source within 1/4 mile upstream or downstream from the point of withdrawal such that the difference between the volume withdrawn and the volume returned is no more than the threshold amount per day. This also includes withdrawals from groundwater that are discharged to a subsurface system or to a hydraulically-connected surface water body such that no more than the threshold amount is consumed.

**Sec. 3. 38 MRSA §470-A, sub-§2,** as enacted by PL 2001, c. 619, §1, is amended to read:

**2. Water source.** "Water source" means any river, stream or brook as defined in section 480-B, or any lake or pond classified GPA pursuant to section 465-A ~~or groundwater located anywhere in the State.~~

**Sec. 4. 38 MRSA §470-B,** as enacted by PL 2001, c. 619, §1, is amended to read:

**§ 470-B. Threshold volumes for reporting**

Except as otherwise provided in this article, a person making a water withdrawal in excess of the threshold volumes established in this section shall file a water withdrawal report in accordance with section 470-D covering the 12 months ending on the previous September 30th. The threshold volumes for reporting are as follows.

**1. Withdrawals from river, stream or brook.** The threshold volume for reporting on withdrawals from a river, stream or brook ~~or groundwater within 500 feet of a river, stream or brook~~ is 20,000 gallons on any day or, if the watershed area at the point of withdrawal exceeds 75 square miles, a volume in gallons per day for any day that is:

- A. One percent of the estimated low-flow volume of water to occur for 7 days once in 10 years based on historical flows for rivers, streams or brooks with an adequate record of gauge data;
- B. One percent of the estimated low-flow volume of water to occur for 7 days once in 10 years based on an estimated low-flow value for a river, stream or brook below a dam where flow is limited by gate settings or leakage; or
- C. If paragraphs A and B are not applicable, then a threshold volume calculated using the formula  $V=168.031 \text{ times } A \text{ to } 1.1 \text{ power}$ , where V is the volume in gallons per day and A is the watershed area in square miles.

**2. Withdrawals from GPA lake or pond.** The threshold volume for reporting on withdrawals from a Class GPA lake or pond ~~or groundwater within 500 feet of the lake or pond~~ is determined from the following table:

Lake area in acres	gallons/ week
< 10	30,000
10-30	100,000
31-100	300,000
101-300	1,000,000
301-1000	3,000,000
1001-3000	10,000,000
3001-10,000	30,000,000

**3. Withdrawals from other groundwater sources.** ~~The threshold volume for reporting on withdrawals from groundwater greater than 500 feet from a river, stream, brook or GPA classified lake or pond is 50,000 gallons on any day, unless the person making the water withdrawal demonstrates to the department's satisfaction that the withdrawal will not impact any adjacent surface water body.~~

**Sec. 5. 38 MRSA §470-D, 2nd ¶**, as enacted by PL 2001, c. 619, §1 and amended by PL 2003, c. 689, Pt. B, §§6 and 7, is further amended to read:

Water withdrawal reports must be submitted to either the Commissioner of Environmental Protection, the Commissioner of Conservation, the Commissioner of Health and Human Services or the Commissioner of Agriculture, Food and Rural Resources in a form or manner prescribed by that commissioner. No later than January 1, 2003, those commissioners shall jointly publish a list indicating which classes of users are to report to which department. The form and manner of reporting must be determined by each commissioner, provided that the required information is collected from each user above the threshold and in a manner that allows that data to be combined with data collected by the other commissioners. The reports must include information on actual and anticipated water use, the identification of the water source, the location of the withdrawal ~~including the distance of each groundwater withdrawal from the nearest surface water source~~, the volume of the withdrawals that might be reasonably anticipated under maximum high-demand conditions and the number of days those withdrawals may occur each month and the location and volume of each point of discharge. The reporting may allow volumes to be reported in ranges established by the commissioners and reported volumes may be calculated estimates of volumes. The board, the Department of Agriculture, Food and Rural Resources, the Department of Conservation and the Department of Health and Human Services may adopt routine technical rules as defined in Title 5, chapter 375, subchapter ~~H-A2-A~~ as necessary to implement the reporting provisions of this article.

**Sec. 6. 38 MRSA c. 3, sub-c. 1, art. 4-C** is enacted to read:

## **ARTICLE 4-C**

### **Groundwater Withdrawal Program**

#### **§ 470-R. Definitions**

As used in this article, unless the context otherwise indicates, the following terms have the following meanings.

**1. Farming.** "Farming" means:

A. The cultivation or other use of land for growing food, fiber, Christmas trees or horticultural and orchard crops;

B. The raising, feeding or management of livestock, poultry, fish or bees;

C. The operation of greenhouses;

D. The production of maple syrup;

E. The on-site storage, preparation and sale of agricultural products principally produced on the farm;

F. The on-site storage, preparation, production and sale of fuel or power from agricultural products or wastes principally produced on the farm; or

G. The raising, feeding or management of 4 or more equines owned or boarded by the farmer, including training, showing and providing instruction and lessons in riding, training and the management of equines.

**2. Groundwater.** "Groundwater" means water below the land surface, including springs.

**3. Municipality.** "Municipality" means a city, town, plantation or unorganized township.

**4. Spring.** "Spring" means a groundwater source where groundwater flows naturally to the surface of the earth and is collected with a developed structure that is designed to locate or extract groundwater.

**5. Surface water.** "Surface water" means all rivers, streams, creeks, brooks, reservoirs, ponds, lakes and springs and all bodies of water, artificial or natural, that are not groundwater and are contained within, flow through or border upon the State or any portion of it.

**6. Water resources.** "Water resources" means groundwater or surface water.

**7. Well.** "Well" means any hole drilled, driven, bored, excavated or created by similar method into the earth to locate, monitor, extract or recharge groundwater where the water table or potentiometric surface is artificially lowered through pumping.

**8. Withdraw; withdrawal.** "Withdraw" or "withdrawal" means the intentional removal by any method or instrument of groundwater from a well, spring or combination of wells or springs.

## **§ 470-S. Groundwater withdrawal; reporting**

Notwithstanding any other provision of law, this section governs the reporting of withdrawals.

**1. Groundwater report.** Beginning October 1, 2009 and annually thereafter, a person that withdraws more than 20,000 gallons per day averaged over a calendar month at a single tract of land or place of business at any time during the preceding calendar year shall file a groundwater report with the department on or before October 1st for the preceding calendar year. The report must be made on a form prescribed by the department and must include:

A. The location, capacity, frequency and rate of the withdrawal;

B. A description of the use of the water withdrawn; and

C. Where feasible, the distance of each withdrawal from the nearest surface water source and wetland.

**2. Exemptions.** The following are exempt from the reporting requirements of this section:

A. A withdrawal for fire suppression or other public emergency purposes;

B. A withdrawal reported to the department under any program that requires the reporting of substantially similar data. The department shall record such withdrawals with the information from withdrawals reported under this section;

C. Residential use;

D. Withdrawal for farming;

E. Dairy processors;

F. Public water systems; and

G. Closed loop, standing column or similar nonextractive geothermal heat pumps.

**3. Rules.** The department may adopt rules to implement this section, including methods for calculating or estimating the amount of groundwater withdrawn from a well or spring. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

### **§ 470-T. Groundwater withdrawal permitting**

Notwithstanding any other provision of law, this section governs the permitting of withdrawals.

**1. Permit required.** On and after July 1, 2010, a person may not, for commercial or industrial uses, make a new or increased withdrawal of more than 57,600 gallons a day from any well or spring on a single tract of land or at a place of business without first receiving from the department a groundwater withdrawal permit. The following constitutes a new or increased withdrawal:

A. The expansion of any existing permitted withdrawal through:

(1) Additional withdrawal from one or more new wells or springs; or

(2) An increase in the rate of withdrawal from a well or spring above the maximum rate set forth in any existing permit issued by the department under this section; or

B. For previously unpermitted withdrawals, an increase in the rate of withdrawal on or after July 1, 2010 from a well or spring on a single tract of land or at a place of business of 25% of the baseline withdrawal or an increase of 57,600 gallons of groundwater withdrawn, whichever is less.

For the purposes of this subsection, the baseline withdrawal is the highest amount withdrawn in a day by a person between 2005 and 2010.

**2. Exemptions.** The following are exempt from the permitting requirements of this section:

A. A withdrawal for fire suppression or other public emergency purposes;

B. Residential use;

C. Withdrawal for farming;

D. Dairy processors;

E. Public water systems; and

F. Closed loop, standing column or similar nonextractive geothermal heat pumps.

**3. Public meetings; notification.** The provisions of this subsection govern meeting and notification requirements relating to groundwater withdrawal permits.

A. At least 30 days before filing an application for a permit under this section, an applicant shall hold an informational meeting in the municipality in which the withdrawal is proposed in order to describe the proposed withdrawal and to hear comments regarding the proposed withdrawal. The applicant shall give public notice by posting in the office of the municipality in which the withdrawal is proposed and by publishing in a local newspaper at least 10 days before the meeting.

B. On or before the date of filing an application for a permit under this section, an applicant shall notify:

(1) The municipal officer, legislative body and any conservation commission in the municipality in which the proposed withdrawal is located;

(2) Adjoining municipalities;

(3) Any regional planning commission in the region where the proposed withdrawal is located;

(4) All landowners and mobile home park residents within the area affected by a proposed withdrawal or within 1/4 mile downstream from a withdrawal from a spring; and

(5) Any public water system in the municipality where the proposed withdrawal is located.

C. An applicant for a permit under this section shall publish notice of the application in a newspaper of general circulation in the area in which the withdrawal is proposed and shall post a copy of the notice in the office of the municipality in which the withdrawal is proposed.

D. On its own motion or on receipt of a written request, the department may hold a public meeting in the municipality in which a withdrawal is proposed in order to describe the proposed withdrawal and to hear comments regarding the proposed withdrawal. Opportunity must be given all participants at a public meeting to ask questions and comment on all issues involved. The department shall prepare

a summary of each public meeting conducted. Public notice must be given by posting in the office of the municipality in which the withdrawal is proposed and by publishing in a local newspaper at least 10 days before the meeting.

E. A defect in the form or substance of any notice requirements in this subsection may not invalidate an application for a permit under this section as long as reasonable efforts are made to provide adequate posting and notice. An application for a permit under this section is invalid when a defective posting or notice was materially misleading in content.

**4. Application.** Application for a permit under this section must be on a form prepared by the department. An application must, at a minimum, contain the information necessary to make the determinations contained in subsection 5 and the following:

A. The purpose for the withdrawal;

B. The location and source of the withdrawal;

C. The amount of the proposed withdrawal, including estimates of the projected mean and peak daily, monthly and annual withdrawals;

D. The place of the proposed return flow of withdrawn water;

E. The estimated amount of water that will not be returned to the watershed where the proposed withdrawal is located;

F. The location, demand on and yield of existing sources of groundwater and surface water to be used by the applicant; and

G. A brief description of the alternative means considered for satisfying the applicant's stated use for water.

**5. Determination by department.** The department may not issue a permit for a new or increased withdrawal unless the department determines that:

A. The proposed withdrawal is planned in a fashion that provides for efficient use of the water;

B. The proposed withdrawal, in combination with other existing withdrawals, will meet the standards set by the department in rule for establishing a safe yield in the area of the withdrawal;

C. The proposed withdrawal is consistent with a municipal ordinance, if any, in the municipality in which the proposed withdrawal is located and with the state policy to manage groundwater as a shared resource for the benefit of all citizens of the State, including any policies and programs regarding long-range planning, management, allocation and use of groundwater and surface water in effect at the time the application for the withdrawal is filed;

D. The proposed withdrawal will not have an undue adverse effect on existing uses of water dependent on the same water source;

E. The proposed withdrawal will not have an undue adverse effect on a public water system;

F. The proposed withdrawal will not have an undue adverse effect on significant wetlands under the State's wetland rules or on other water resources hydrologically interconnected with the well or spring from which the proposed withdrawal would be made;

G. The proposed withdrawal will not violate the State's water quality standards; and

H. Any other consideration that the department determines necessary for the conservation of water or protection of groundwater quality is met.

**6. Permits.** A permit issued under this section is valid for the period of time specified in the permit but not for more than 10 years. A permit issued under this section must include the following:

A. A provision that withdrawals from a well or spring for drinking water supplies, farming or dairy processing must be given priority over other uses during times of shortage; and

B. Any other condition that the department determines necessary for the conservation of water or protection of groundwater quality.

**7. Other permitting authority of department.** Notwithstanding subsection 1, the department may require any person withdrawing groundwater in the State to obtain a permit under this section if the withdrawal is not exempt under subsection 2 and the department determines that the withdrawal violates the State's water quality standards or has an undue adverse effect on an existing use of groundwater, a public water system, wetlands or water resources hydrologically interconnected with the well or spring from which the withdrawal occurs. The department shall make a determination under this subsection based on review of the information set forth under subsection 4 that is readily available to the department.

**8. Transfer of permit.** A withdrawal permit issued under this section may be transferred upon a change of ownership of the facility or project for which the permit was issued as long as the new owner applies for an amendment to the permit certifying its agreement to comply with all terms and conditions of the transferred permit and assume all other associated obligations.

**9. Compliance with public trust requirements.** The following withdrawals are deemed to comply with the public trust requirements of the State for groundwater management and are entitled to a presumption that the withdrawal complies with the public trust requirements of the State:

A. A withdrawal permitted under this section;

B. A withdrawal for domestic residential use;

C. A withdrawal for a public water system except for a bottled water facility;

D. A withdrawal for farming; and

E. A withdrawal by a dairy processor.



**10. Rules.** By July 1, 2010, the department shall adopt rules to implement this section. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A. Rules adopted under this subsection must include:

A. Requirements for the mitigation of an undue adverse effect on drinking water supplies, farming, public water systems or any other affected use when the department determines such an undue adverse effect is likely to occur due to a withdrawal; and

B. Requirements for the renewal of permits issued under this section.

**11. Effect on deeds or contracts.** Nothing contained in this article may be construed to alter or modify a right under a deed or contract to access groundwater in this State.

### **§ 470-U. Circumvention**

The department may require a person to report under section 470-S or obtain a permit under section 470-T when the department, in the department's discretion, determines that a withdrawal, subdivision of land, transfer of property or other action is intended to circumvent the requirements of this article.

**Sec. 7. 38 MRSA §480-B, sub-§9-A,** as enacted by PL 2007, c. 399, §10, is repealed.

**Sec. 8. 38 MRSA §480-C, sub-§4,** as enacted by PL 2007, c. 399, §11, is repealed.

**Sec. 9. 38 MRSA §480-D, sub-§10,** as enacted by PL 2007, c. 399, §12, is repealed.

**Sec. 10. 38 MRSA §482, sub-§2, ¶D,** as amended by PL 1999, c. 468, §6, is further amended to read:

D. Is a subdivision as defined in this section; or

**Sec. 11. 38 MRSA §482, sub-§2, ¶F,** as enacted by PL 1997, c. 502, §5, is amended to read:

F. Is an oil terminal facility as defined in this section; or

**Sec. 12. 38 MRSA §482, sub-§2, ¶J** is enacted to read:

J. Involves a withdrawal of more than 340,000 gallons of groundwater per day from any well or spring on a single tract of land or at a place of business, independent of the acreage of the tract of land or place of business, if the withdrawal requires a permit under section 470-T.

## **SUMMARY**

This bill is based on Vermont law. It declares the State's groundwater to be a public trust resource. It sets up reporting and permitting requirements for large groundwater withdrawals and repeals current Maine law regarding reporting of groundwater withdrawals and permitting of significant groundwater wells. It requires site law review for certain groundwater withdrawals of more than 340,000 gallons per day.